

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LOUIS ANTONIO SPEARS,

Defendant-Appellant.

UNPUBLISHED

September 18, 2003

No. 237825

Genesee Circuit Court

LC No. 2001-007935-FH

Before: O'Connell, P.J., and Jansen and Fort Hood, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of possession with intent to deliver 225 grams or more, but less than 650 grams, of cocaine, MCL 333.7401(2)(a)(ii), possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), maintaining a drug house, MCL 333.7405(1)(d), possession of a firearm by a felon, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to two years' imprisonment for the felony-firearm conviction, to be served consecutive to and followed by concurrent terms of imprisonment of twenty to forty-five years for the possession with intent to deliver cocaine conviction, four to six years for the marijuana conviction, two to three years for the drug house conviction, and sixty to ninety months for the felon in possession of a firearm conviction. He appeals as of right. We affirm.

I. Facts

Early in the morning of July 17, 1999, a Flint police officer went to 2602 Walter in response to a call about a home invasion in progress. Defendant appeared at the scene, told the officer that he lived at the house, and identified several items stolen from the house as belonging to him. The officer then received information through his police radio that defendant was suspected of drug offenses, upon which defendant denied living at that address. However, defendant continued to assert that the stolen items belonged to him.

In early September 1999, pursuant to a warrant, the police searched the house. They discovered quantities of marijuana and cocaine in various parts of the house, including 315.9 grams of cocaine in five bags inside a purse, which also contained several diverse documents with Tamika Hatter's name on them. The police also found over \$30,000 in currency hidden about the house, plus two loaded handguns.

A detective with the Phoenix, Arizona, Police Department testified that on April 7, 2001, acting on information from an officer with the federal Drug Enforcement Administration, he approached defendant when the latter finished a flight from Detroit to Phoenix, and found defendant in possession of a large amount of cash and a Michigan identification card that gave his name as “Bentley.” Defendant identified his birthday as June 13, 1972, to police, but the identification card listed his birthdate as September 8, 1971.

Tamika Hatter was separately tried, and convicted, in connection with this investigation. Defendant was found guilty as charged.

II. Probable Cause to Search

Defendant unsuccessfully sought to suppress the evidence discovered at 2602 Walter pursuant to a search warrant, by alleging that the affidavit in support of the warrant failed to establish probable cause for the search. Defendant alleges that the trial court erred in denying the motion and erred in declining to convene an evidentiary hearing on the matter. We disagree. Appellate review of a magistrate’s determination whether probable cause exists to support a search warrant “involves neither de novo review nor application of an abuse of discretion standard. Rather, the preference for warrants . . . requires the reviewing court to ask only whether a reasonably cautious person could have concluded that there was a ‘substantial basis’ for the finding of probable cause.” *People v Russo*, 439 Mich 584, 603; 487 NW2d 698 (1992). A trial court’s decision whether to hold an evidentiary hearing is reviewed for an abuse of discretion. See *People v Mischley*, 164 Mich App 478, 482; 417 NW2d 537 (1987).

Evidence obtained in violation of a suspect’s rights under the Fourth Amendment of the United States Constitution is subject to suppression at trial. *People v Cartwright*, 454 Mich 550, 557-558; 563 NW2d 208 (1997), citing *Weeks v United States*, 323 US 383; 34 S Ct 341; 58 L Ed 652 (1914), and *Mapp v Ohio*, 367 US 643; 81 S Ct 1684; 6 L Ed 2d 1081 (1961) (incorporating the Fourth Amendment against the states under the Fourth Amendment). The Fourth Amendment guarantees that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation” This language “surely takes the affiant’s good faith as its premise,” and thus a defendant is entitled to challenge the truthfulness of the information offered in support of a search warrant. *Franks v Delaware*, 438 US 154, 164; 98 S Ct 2674; 57 L Ed 2d 667 (1978).

This does not mean “truthful” in the sense that every fact recited in the warrant affidavit is necessarily correct, for probable cause may be founded upon hearsay and upon information received from informants, as well as upon information within the affiant’s own knowledge that sometimes must be garnered hastily. But surely it is to be “truthful” in the sense that the information put forth is believed or appropriately accepted by the affiant as true. [*Id.* at 165.]

Affidavits in support of search warrants come to court with “a presumption of validity,” and a defendant seeking to overcome that presumption must do more than make conclusory assertions or ask questions. *Id.* at 171.

There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof.

They should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons. . . . Allegations of negligence or innocent mistake are insufficient. The deliberate falsity or reckless disregard whose impeachment is permitted . . . is only that of the affiant, not of any nongovernmental informant. . . . [I]f these requirements are met, and if, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding or probable cause, no hearing is required. On the other hand, if the remaining content is insufficient, the defendant is entitled . . . to his hearing. [*Id.* at 171-172.]

In this case, the affidavit, sworn out by a police officer, reported the July 17, 1999, investigation of a home invasion in progress and the resultant discovery of “a quantity of cocaine and marijuana within plain view,” and that a subsequent warranted search turned up digital scales, packaging material, and over \$11,000 in currency. The affidavit alleged that “during the month of August, 1999,” the affiant learned from a reliable informant that defendant resided at 2602 Walter Street and continued to sell “large quantities of marijuana” from that location. It was also asserted that, in the early morning hours of September 8, 1999, six trash bags were observed in front of the house, three of which were removed by the police, who found within them “four marijuana stems and one partially smoked marijuana cigarette and correspondence addressed to [defendant] of 2602 Walter Street.” The affiant further attested that he was well experienced in investigating illegal drug activities, and that he believed that “evidence of illegal drug activity will be found at the . . . address.” The warrant was issued on September 9, 1999.

Defendant alleges that the affidavit was deficient because the allegations were too remote in time, not dated with sufficient specificity, improperly based on the account of an unnamed informant, or simply misleading. We conclude that, taken as a whole, the affidavit sufficiently set forth probable cause to support the resulting warrant.

Had the discoveries of July 17, 1999, been the sole basis for the warrant issued on September 9 of that year, “staleness” of the information might have rendered it insufficient to support the warrant. See *People v Sobczak-Obetts*, 253 Mich App 97, 107-108; 654 NW2d 337 (2002), citing *Russo, supra* at 603-604. However, information brought to light a continuum of drug-related activities that, accordingly, never went stale for purposes of a warrant. While defendant insists that there was an insufficient basis to rely on the information from an unnamed informant, the affiant’s report that the informant had provided useful information to him repeatedly in the past was sufficient. See MCL 780.653(b). Defendant also challenges the value of the evidence discovered in the trash bags. Specifically, it was alleged that: the correspondence addressed to defendant might have been in a bag other than that or those with the marijuana evidence; the bags may have been older than the one week the trial court identified as the interval for trash collection in Flint; and some third person unrelated to the household could have either left the bag or bags in question, or at least, have deposited the contraband after the bags were set out. However, such speculation concerning alternative interpretations of the evidence retrieved from the trash does not dispel the obvious probability that the trash bags, and their contents, came from the house in front of which they were found, and reflected recent activities within the house.

Defendant additionally points out that the affiant described finding “a quantity of cocaine and marijuana” at the house on July 17, and asserts, without citation to the record, that the police report attendant to that search described finding only the “residue” of those substances. We agree with the trial court that the shades of meaning according to which the word “quantity” may be taken to indicate a greater amount of substance than a mere “residue” do not provide a sufficient exaggeration as to discredit the affidavit with the taint of deliberate falsehood. For these reasons, we conclude that the trial court neither erred in declining to suppress the evidence seized pursuant to the search warrant, nor in failing to hold an evidentiary hearing to consider the matter further.

III. Forfeiture Documents

At trial, the prosecutor introduced into evidence a notice of intent to forfeit and notice of claim. The notice of intent described the seizure of \$11,872 in currency, along with a digital scale valued at \$100, from 2602 Walter on July 17, 1999, listing defendant as the person from whom the property was seized, and the Walter address as his own. The notice of claim listed defendant as the claimant, with an address not on Walter, and bore apparently defendant’s signature plus the statement, “I owned the 4,990.00 US currency in the men’s coat.” Defendant alleges that the trial court erred in denying his motion to exclude this evidence. We disagree. The decision whether to admit evidence is within the trial court’s discretion and is reviewed on appeal for an abuse of discretion. *People v Bahoda*, 448 Mich 261, 288; 531 NW2d 659 (1995).

The prosecutor sought admission of this evidence pursuant to MRE 404(b)(1). That rule establishes that evidence of other bad acts is not admissible to prove a person’s character in order to show behavior consistent with those other wrongs, but provides that such uncharged conduct may be admissible for other purposes, “such as proof of motive, opportunity, intent, preparation, scheme, plan or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material” Evidence of prior bad acts is admissible if it is offered for a proper purpose, if it is relevant, and if its probative value is not substantially outweighed by unfair prejudice. *People v Crawford*, 458 Mich 376, 385; 582 NW2d 785 (1998), citing *People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). A proper purpose is one other than establishing the defendant’s character to show his or her propensity to commit the offense. *VanderVliet*, *supra* at 74.

The prosecutor sought admission of the evidence of the forfeiture proceedings to demonstrate defendant’s disputed relationship to the house at 2602 Walter. We agree with the trial court that this evidence was relevant to the question of defendant’s connection with the house, and with the prosecutor that it tended to show identity and absence of mistake. We disagree, however, with defendant’s assertion that the risk of unfair prejudice substantially outweighed the probative value of this evidence. See MRE 403. Although evidence of the forfeiture proceedings concerning thousands of dollars in cash, plus a digital scale, had some potential to prejudice the defense, such evidence also had potential to prejudice the prosecution, in that it revealed a financial incentive on the part of the police to build a case against the house and its occupants. For these reasons, the trial court did not abuse its discretion in allowing the evidence of the forfeiture proceedings.

IV. Evidence of Flight

Defendant filed a motion to prevent the prosecutor from introducing evidence that he was arrested in Arizona in April 2001, and possessed a piece of false identification, which the prosecutor wished to introduce as evidence of defendant's guilty consciousness. Defendant alleges that the trial court erred in denying his motion. We disagree. The general admissibility of flight to prove consciousness of guilt is well established. See, e.g., *People v Compeau*, 244 Mich App 595, 598; 625 NW2d 120 (2001), citing *People v Cammarata*, 257 Mich 60, 66; 240 NW 14 (1932).

Defendant suggests that the prosecutor failed to establish a foundation because there was no evidence that he had knowledge of the criminal complaint and warrant against him at the time of his air travel to Arizona. However, defendant cites no authority for the proposition that a suspect must have knowledge of the pendency of formal criminal proceedings before evidence of his or her flight from an area becomes relevant. Defendant further notes that the complaint and warrant were issued two months after the initial search of the premises in question and alleges that he had reasons other than the instant investigation for his movements. Remoteness in time goes to the weight to be afforded such evidence, not its admissibility. See *Compeau*, *supra*.

V. Sufficiency of the Evidence

Defendant challenges the sufficiency of the evidence to support his convictions. When reviewing the sufficiency of evidence in a criminal case, a reviewing court must view the record evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that each element of the crime was proved beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994).

A. “Keep and Maintain”

Defendant alleges that the prosecutor failed to produce sufficient evidence to persuade a reasonable jury that he kept and maintained the house at 2602 Walter for purposes of conviction of maintaining a drug house. We disagree. The drug-house statute, MCL 333.7405(1)(d), provides that a person shall not “keep or maintain a . . . dwelling, building, . . . or other structure or place, that is frequented by persons using controlled substances in violation of this article for the purpose of using controlled substances, or that is used for keeping or selling controlled substances in violation of this article.” For purposes of this statute, to keep or maintain a drug house “it is not necessary to own or reside at one, but simply to exercise authority or control over the property for purposes of making it available for keeping or selling proscribed drugs and to do so continuously for an appreciable period.” *People v Griffin*, 235 Mich App 27, 32; 597 NW2d 176 (1999).¹

The police officer's account of defendant's representations concerning his relationship with the house on July 17, 1999, supported the conclusion that defendant both lived at the house and exercised some control over it for illicit purposes. Defendant initially said he lived at the house, and unhesitatingly identified several items taken from it, but then disclaimed his

¹ Amendment of the statute has not affected the “keep or maintain” prohibition. *Griffin*, *supra* at 32 n 1.

connection with the house when the officer received information that defendant was suspected in drug trafficking. The pieces of correspondence addressed to defendant at 2602 Walter, discovered in the “trash pull” of September 8, 1999, and in the search that immediately followed were indicative of defendant’s residency at the address at that time. Defendant suggests that some of the correspondence was not recent, but nonetheless fails to refute the obvious implication that the presence of correspondence personal to defendant, regardless of its immediacy in time, is indicative of defendant’s own residential presence. Further, the discovery of a magazine addressed to defendant at the house, dated just a few days before the search, indicates a recent use of 2602 Walter as defendant’s address.

Additional proof of defendant’s intimate connection with the house included the presence of defendant’s birth certificates and driver’s license. The keeping of such documents in the house is inconsistent with an owner’s mere casual or occasional presence there. Further, that defendant kept such important documents in the house additionally indicated that he thought himself to have some control over the premises. Additional evidence of defendant’s control over the house included the discovery there of a service agreement for that house between Guardian Alarm and defendant, and also of a loaded gun stored in the proximity of defendant’s driver’s license and birth certificates.

That defendant exercised authority or control over the property for an appreciable period was thus well demonstrated. *Griffin, supra*. For purposes of his drug-house conviction, then, the question that remains is whether the evidence sufficiently linked defendant to the various drugs found in the house. This inquiry is closely correlated to defendant’s other possessory convictions.

B. Possession

Defendant alleges that the evidence did not sufficiently link him to the contraband in the house to support his convictions. We disagree. Possession with intent to deliver can be established through circumstantial evidence and reasonable inferences arising from the evidence. *People v Wolfe*, 440 Mich 508, 526; 489 NW2d 748, amended 441 Mich 1201 (1992). Possession may be actual or constructive. “The essential question is whether the defendant had dominion or control over the controlled substance.” *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995). “[M]ere proximity to the drug, mere presence on the property where it is located, or mere association, without more, with the person who does control the drug or the property on which it is found, is insufficient to support a finding of possession.” *Griffin, supra* at 35 (internal quotation marks and citations omitted).

Possession of large quantities of illegal substances may indicate an intent to deliver. *Wolfe, supra* at 524. Possession of unusually large quantities of currency is likewise characteristic of drug trafficking. See *United States v Forrest*, 17 F3d 916, 919 (CA 6, 1994). “‘Constructive possession may . . . be proven by the defendant’s participation in a “joint venture” to possess a controlled substance.’” *Wolfe, supra* at 521, quoting *United States v Disla*, 805 F2d 1340, 1350 (CA 9, 1986).

In this case, evidence that correspondence personal to defendant was found near some of the contraband suggests that defendant had some control over that contraband. Defendant’s own claim for nearly \$5,000 in currency seized from a man’s coat at 2602 Walter is indicative not

only of defendant's presence about the house, but also of his involvement in activities there that gave rise to possession of large quantities of cash. This evidence suggests a linkage to the various illegal drugs found about the house well beyond defendant's mere presence in their proximity. See *Wolfe, supra* at 525. From the quantities of controlled substances and cash found in the house, along with a digital scale, plus written records of names accompanied by numbers and dollar amounts, a reasonable jury could infer that this was a house of drug trafficking. *Id.* at 524.

Beyond defendant's general arguments that the evidence was insufficient to link him with any of the contraband found in the house, defendant placed special emphasis on the 315.9 grams of cocaine found in a purse, that evidently belonged to Tamika Hatter. However, the evidence considered as a whole clearly indicated that Hatter and defendant were both operating a criminal venture from 2602 Walter. That the bulk of the cocaine was discovered in an accessory that was presumably more closely identified with Hatter alone is insufficient to shield defendant from responsibility for the unlawful possession. The purse was found in the basement, on a countertop behind a bar, not in a location Hatter might logically be expected to customarily, let alone exclusively, have access.

Defendant further complains that the police did not undertake a qualitative analysis of the various quantities of cocaine to ascertain whether they had some common origin. This argument is unpersuasive because common origin, by itself, would not necessarily either prove or disprove a particular person's possession. Further, if the defense saw any benefit could be derived from qualitative analysis, the defense was free to arrange for such analysis. See MCL 780.655; *Arizona v Youngblood*, 488 US 51, 58; 109 S Ct 333; 102 L Ed 2d 281 (1988) (the police have a duty to preserve potentially exculpatory evidence).

For these reasons, we reject defendant's challenge to the sufficiency of the evidence.

Affirmed.

/s/ Peter D. O'Connell
/s/ Kathleen Jansen
/s/ Karen M. Fort Hood